

Barbara Matthews (SBN 195084)
Assistant U.S. Trustee
Margaret H. McGee (SBN 142722)
Trial Attorney
U.S. Department of Justice
Office of the United States Trustee
1301 Clay Street, Suite 690N
Oakland, California 94612-5231
Telephone: 510-637-3200
Facsimile: 510-637-3220
E-mail: Maggie.McGee@usdoj.gov

Attorneys for Acting United States Trustee,
Region 17, Sara Kistler

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In Re:

Case No.10-40115 LT

Chapter 11

EDUARDO ESQUIVIAS QUINTONG and
ELIZABETH GUINA QUINTONG

Debtor(s).

ACTING U.S. TRUSTEE OBJECTION TO EMPLOY COUNSEL

Sara L. Kistler, the Acting U.S. Trustee for Region 17, hereby objects to the Debtor's application to employ Sagaria Law, P.C. as attorney in this chapter 11 case and, in support thereof, states as follows:

1. Debtors EDUARDO ESQUIVIAS QUINTONG and ELIZABETH GUINA QUINTONG filed a bankruptcy petition under chapter 11 on January 6, 2010. The Debtor filed an application to employ counsel on April 15, 2010. The Debtor seeks to employ counsel as of January 5, 2010. Pursuant to the U.S. Trustee Guidelines, an application for employment must be filed within 15 days of the filing of the petition. The Debtor filed the present application over three months after the petition was filed. Retroactive approval of an employment application requires a showing of exigent circumstances as to

1 why the application could not have been filed on a timely basis. In re Atkins., 65 F.3d
2 970 (9th Cir. 1995). The Debtor has made no showing why the application is being filed
3 so long after the petition was filed. Therefore, the application should be denied on a
4 retroactive basis.

5 2. The Debtor's application also is deficient in the following respects:

- 6 a. The wrong date is stated as the petition filing date. Instead of January 6, 2010,
7 the application states that the petition was filed on August 12, 2010;
- 8 b. The application fails to state the date the Sargaria Law received the retainer of
9 \$8,961.
- 10 c. The Attorney Retainer Agreement ("ARA"), attached to the application includes a
11 provision that a minimum fee of one hour will be charged for opening and closing
12 a file (¶5). The Acting U.S. Trustee objects to this provision as it overrides the
13 Court's authority to approve fees and may excessively charge the Debtors for
14 services provided by counsel.
- 15 d. The ARA includes a provision which allows the Debtor to advance costs to
16 counsel without court authorization (¶6). Such a term is impermissible in
17 bankruptcy. All fees, including costs, are subject to court approval.
- 18 e. The ARA includes a provision which allows counsel to be paid fees despite a
19 court order indicating otherwise. ¶8) Such a term is impermissible in
20 bankruptcy. All fees, including costs, are subject to court approval.
- 21 f. The ARA includes a provision that the retainer includes a non-refundable \$5,000
22 payment and that if payments are not received on the first of each month, counsel
23 can withdraw (¶9). Paragraph 9 of the ARA also includes a provision that the
24 retainer shall be replenished on an ongoing basis. Again, these terms are
25 impermissible in bankruptcy. All fees, including costs, are subject to court
26 approval. Counsel can withdraw from a case only upon application to the Court.
27 Post petition retainers must be approved by the Court.
- 28 g. Finally, the ARA includes an impermissible arbitration clause (¶20) and attached

1 to the ARA is an impermissible arbitration agreement. Again, all fees, including
2 costs, are subject to court approval.

3 Wherefore, the Acting U.S. Trustee prays that this court deny the application to employ
4 Sagaria Law as counsel to the Debtor

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6 Dated: 4/6/10

Respectfully submitted,

7 Barbara A. Matthews
8 Assistant U.S. Trustee

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10 By: /s/ Margaret H. McGee
11 Margaret H. McGee
12 Trial Attorney
13 Attorneys for Sara L. Kistler
14 Acting United States Trustee
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